Sun Country Citrus, Inc. *and* Construction, Production & Maintenance Laborers' Union, Local 383, Laborers' International Union of North America, AFL-CIO

Sun Country Citrus, Inc. *and* Construction, Production and Maintenance Laborers' Union, Local 383, an affiliate of the Laborers' International Union of North America, AFL-CIO and Sales Drivers and Helpers Teamsters Local 274, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitoner. Cases 28-CA-6156 and 28-RC-3849

30 January 1984

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 15 March 1983 Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We specifically affirm the judge's conclusion that Supervisor Gross violated Sec. 8(a)(1) by soliciting employee Vasquez to dissuade other employees from supporting the Union. Our dissenting colleague apparently views this conduct as innocuous in the context of a general friendship between Vasquez and Gross. The Chairman's view excludes from consideration facts which place Gross' conduct in the proper context. Having hired Vasquez, Gross approached her on the first day of her job, informed her about the Union's organizational effort, directly asked her if she would vote for the Union, told her not to vote for it, implied surveillance of the Union's activities by identifying its employee adherents, and threatened to take her "to the office" if she spoke well of the Union. After this bit of "friendly persuasion," Gross informed Vasquez that she hired her to help persuade other employees to vote against the Union. Then, in the evening of the same day, Gross visited Vasquez at her home where she again solicited her help in dissuading employees from voting for the Union, and repeated her threat to take Vasquez to the office if she spoke favorably about the Union. Under these circumstances, we find that Gross far transgressed the bounds of friendship. Her solicitation to oppose the Union, coupled with an express threat of adverse action for failing to do so, would reasonably tend to coerce Vasquez or any employee from engaging in union activities.

Contrary to the judge, we conclude that Supervisor Gross' assertion, that if employee Vasquez voted for the Union the Union would have her fired, did not constitute illegal conduct under Sec. 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sun Country Citrus, Inc., Yuma, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

IT IS FURTHER ORDERED that the election in Case 28-RC-3849 be set aside and that said case be severed and remanded to the Regional Director for Region 28 for the purpose of conducting a new election.

[Direction of Second Election omitted from publication.]

CHAIRMAN DOTSON, dissenting in part.

Unlike my colleagues, I do not find that the Respondent violated Section 8(a)(1) of the Act when its supervisor asked an employee to relate to other employees her experience with a union.[1] The supervisor, Gross, and the employee, Vasquez, admittedly were friends. They had worked together for a previous employer and Vasquez was hired by Gross to work for the Respondent. It was in this context that Vasquez voluntarily informed Gross that her husband had been a union member. Gross, in turn, asked Vasquez to relate her experience to her fellow employees and ask them to vote against the Union. I do not consider that a request of this nature, in this context, interferes with, restrains, or coerces employees in the exercise of their Section 7 rights.

I agree with the decision in all other respects.

[1] I take issue solely with this specific finding. Thus, I am not persuaded by the majority's reiteration of other violations found by the administrative law judge and with which I agree.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to rehire laid-off or former employees because they engaged in union or other protected concerted activities.

WE WILL NOT interrogate employees concerning their union membership, sympathies, and activities.

WE WILL NOT create among our employees the impression that we are engaging in surveillance of their union or other protected concerted activities.

WE WILL NOT solicit our employees to engage in antiunion campaigning and to dissuade their fellow employees from engaging in union or other protected concerted activities.

WE WILL NOT threaten employees with termination or other reprisals because they engage in union or other protected concerted activities.

WE WILL NOT threaten employees with harsher and more onerous working conditions because they engaged in union or other protected concerted activities.

WE WILL NOT impliedly threaten to notify the Immigration and Naturalization Service in order to dissuade employees from supporting a labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Juan Diaz immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

SUN COUNTRY CITRUS, INC.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge: These matters were tried before me in Yuma, Arizona, on September 29, 1982, pursuant to an order consolidating cases and notice of hearing issued by the Regional Director for Region 28 of the National Labor Relations Board, herein called the Board, on December 30, 1980.[1] The amended complaint in Case 28-CA-6156 was issued by said Regional Director on June 25, 1981,[2] based on an unfair labor practice charge filed by Construction, Production & Maintenance Laborers' Union, Local 383, Laborers' International Union of North America, AFL-CIO, herein called the Laborers, on November 5, 1980, and alleges that Sun Country Citrus, Inc., herein called the Respondent, engaged in acts and conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act. The Respondent filed an answer thereto, denying the commission of any unfair labor practices. The Laborers and Sales Drivers and Helpers Teamsters Local 274, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, jointly filed a petition for an election among certain employees of the Respondent in Case 28-RC-3849 on May 23, 1980, and an election, pursuant thereto, was conducted by the Regional Director for Region 28 on October 31, 1980. The Laborers timely filed objections to the conduct of said election on November 5 and 7, 1980, and the said Regional Director issued an order directing a hearing on the objections on December 19, 1980. The matters were consolidated for hearing inasmuch as several of the objections parallel the unfair labor practice allegations contained in the amended complaint. At the hearing, all parties were afforded a full opportunity to examine and cross-examine witnesses, to offer relevant evidence, and to file posthearing briefs.

Upon the entire record of the case, my observation of the demeanor of the witnesses, and the post-hearing briefs, which have been carefully considered, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a State of Arizona corporation, is engaged in the business of packing and shipping citrus fruits at a place of business located in Yuma, Arizona. During the 12-month period immediately preceding the issuance of the amended complaint, a representative period, the Respondent, in the course and conduct of its aforementioned business operations, sold and shipped citrus fruit, valued in excess of $50,000, directly to customers located outside the State of Arizona. The Respondent admits that, at all times material herein, it has been, and is, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The Respondent admits that the Laborers is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

1. Since on or about September 22, 1980, has the Respondent failed and refused to rehire its former employee, Juan Diaz, in violation of Section 8(a)(1) and (3) of the Act?

2. Has the Respondent engaged in conduct violative of Section 8(a)(1) of the Act by the following acts:

(a) In May 1980, interrogating an employee regarding her union membership, activities, and sympathies.

(b) On or about October 21, 1980, creating the impression among its employees that it was engaging in surveillance of their union activities.

(c) On or about October 21, 1980, soliciting its employees to withhold support from the Laborers and to encourage fellow employees to do the same.

[1] Unless otherwise stated, all events herein occurred in 1980.

[2] The Regional Director issued an order, deleting portions of the 8(a)(1) and (5) allegations and the entire 8(a)(1) and (5) allegation, on April 13, 1982.

(d) On or about October 21, 1980, threatening employees with reprisals if they conferred with other employees about the Laborers.

(e) On or about October 21, 1980, threatening employees that if the Laborers were selected by them as their collective-bargaining representative, it would fire those who voted against it in the forthcoming election.

(f) On or about October 21, 1980, interrogating employees regarding their union membership, activities, and sympathies.

(g) On or about October 25, 1980, telling employees that their jobs would be assured if they voted against the Laborers in the forthcoming election.

(h) On or about October 25, 1980, creating the impression among its employees that more restrictive work rules would result if they selected the Laborers as their collective-bargaining representative.

(i) On or about October 25, 1980, telling employees that the Laborers would not permit them to vote without immigration papers.

(j) On or about October 27, 1980, implying that employees would receive a similar benefit previously received, if they rejected the Laborers.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Respondent's Failure and Refusal to Rehire Employee Juan Diaz*

1. The facts

The record establishes that the Respondent operates a packing house in Yuma, Arizona, wherein various types of citrus fruits including lemons, oranges, and grapefruits are graded, sorted, packaged, and shipped to customers throughout the United States and that said operations are conducted on a seasonal basis, with the lemon picking and packing season lasting from late August until January or February of the following year and the picking and packing of Valencia oranges commencing in late February and continuing through May. Rezza Gorgani, who is currently the president of the Respondent, was its general manager during 1980; George Dominguez has been a foreman since 1977; Richard Ochoa was the "grade foreman" for the Respondent in 1980; and Eva Gross is a floorlady for the Respondent.[3] The record further establishes that, commencing in April 1980, the Laborers and the Teamsters jointly conducted an organizing campaign among the Respondent's employees and that said campaign culminated in the filing of a representation election petition on May 23 in which the Joint Petitioners sought to represent the Respondent's production and maintenance employees and truckdrivers. An election was eventually conducted by a Board agent on October 31, the results of which showed that 38 votes were cast against the Laborers and the Teamsters and 30 votes were cast for them. The Laborers timely filed objections to the conduct of the election.

[3] The Respondent admitted that Dominguez and Ochoa were supervisors within the meaning of Sec. 2(11) of the Act and stipulated to the supervisory status of Gross.

Juan Diaz testified that he worked for the Respondent during the 1979–1980 citrus picking and packing season[4] and that he mainly performed two jobs[5]—making boxes and stacking packed boxes on pallets. Diaz admitted that he exhibited no support for the union organizing campaign during the spring of 1980, and there is no record evidence that he participated in any significant manner except to the extent of executing a Laborers authorization card on April 30 and, perhaps, attending union meetings. As to the former, Diaz stated that no supervisors or anyone else observed him sign the authorization card "because we did it very discreetly," and he also testified that no supervisors ever spoke to him concerning his union activities or that subject generally. There is no dispute that Diaz worked for the Respondent until on or about May 19 at which time he abruptly quit—"Because it was coming to the end of May and they started to take people out of the last ones that were in that didn't have enough time." In this regard, Respondent's Exhibit 5, a week-by-week compilation of the number of packinghouse employees employed by the Respondent from April 26 until November 8, 1980, reveals that 20 new employees were hired during the week ending May 17 and that the number of employees did not decline significantly, reflecting the end of the citrus season, until the week ending June 14. In any event, according to Diaz, he went to Mexico for the summer months.[6]

Diaz further testified that, on returning to the Yuma area, he visited the Respondent's packinghouse on September 22, the Monday of the last complete week in September, seeking work. He met Richard Ochoa by the door and asked to be hired. Ochoa "told me to wait for a little while until he would settle the people . . . so he could accommodate me." Thereupon, according to Diaz, they observed George Dominguez, the foreman, walking

[4] Diaz testified during cross-examination that he was hired in November 1979 but also identified his W-4 tax form which is dated January 11, 1980. Mike Shrader, the Respondent's accountant, testified that the Respondent requires all newly hired employees to complete a W-4 form on the date of hire, that Diaz did not work for the Respondent prior to January 11, 1980, and that company records show that no paychecks were issued to Diaz prior to that date.

[5] There appears to be confusion in the record as to Diaz' job classification and what types of work he was able, and qualified, to perform. At the outset, the record establishes that the packer and grader/sorter jobs are mainly performed by women and that the male jobs involve loading and unloading, palletizing, driving forklifts, cleaning, and general labor. Rezza Gorgani testified that individuals other than packers and graders may be classified as doing one type of work, most work where needed, and may do several different jobs in a day; that Diaz was moved from job to job; and that a general laborer is one "who can do odds and little thing here, little thing down there." Richard Ochoa echoed Gorgani, testifying that Diaz, like other workers, was a "handyman"—"sometimes they load, sometimes they make cartons, everything." G.C. Exh. 3, which is a compilation of the names, classifications, and week of hire for all employees as of October 24, 1980, shows that employees were classified as either packer or grader or general laborer. Based on the foregoing, it is apparent that Diaz was capable of performing all types of work but, perhaps, with the exception of sorting/grading and packing, jobs for which the Respondent utilized women predominantly.

[6] There is some dispute as to where Diaz went after quitting the Respondent's employ in May. Juventino Matus, a box foreman for the Respondent, testified that he had a conversation with Diaz a few days later in the latter's house. Diaz told Matus "that he was going to Colordao for the lettuce, and that the work right there at Sun Country was very hard . . . it was very heavy work, and that he got tired there."

up the stairs which led to the office, and Ochoa said to the foreman that Diaz was there, ready for work. Dominguez responded "that right now at the moment there was no work," and Diaz thereupon left. He testified that for the next 3 weeks, three times each week (on every Monday, Wednesday, and Friday), he went to the packinghouse in order to be rehired for the coming season; on each occasion he was told by Dominguez that there was no work available but that he should come back again. According to Diaz, his last such visit was on Friday,[7] October 15.[8] He met Gilberto Matus, the Respondent's shipping clerk, and they spoke about Diaz returning to work. George Dominguez approached them and said to Matus that he needed two new workers. "And then [Matus] said here's the old man, because that's what they call me, the old man . . . and [Dominguez] said that he wouldn't give me a job because I had signed the Union card." Thereupon, Matus returned to Diaz, and "he told me for you, there's no more work here." Diaz left the packinghouse and did not return.

With regard to the Respondent's defense to the allegations that it unlawfully refused to rehire Juan Diaz, Gilberto Matus denied that the events of October 15, as testified to by Diaz, ever occurred.[9] George Dominguez testified that Diaz did, indeed, seek to be rehired by the Respondent in September 1980—in the midst of the lemon season. According to the foreman, he was working on the packinghouse floor when Diaz entered and approached him. Diaz "came in asking for a job, he told me he really needed a job . . . but at the time I didn't give him a job because I didn't have no openings. I had a crew all set . . . [w]hen he came in . . . he said that he would later give me $50 if I gave him a job right away. I told him, 'That's not the way it work,' but if I needed help, I will hire him but not now, because I had no openings for him. . . . I told him to check back in maybe couple of weeks . . . to see if we needed any more help, and I would hire him." Dominguez specifically denied refusing to hire Diaz because the latter had executed an authorization card, stating, "at that time, I didn't even know he was a union member or he was involved with the union. I just didn't hire him because . . . I didn't need any help at that time."[10] Juventino Matus, the box foreman and a long-term employee, testified that he also spoke to Diaz concerning the availability of work. Placing their conversation at least 1 month before the Respondent commenced hiring additional employees, Matus stated that Diaz came to him and said he wanted to work. Matus replied that there was no work and suggested that Diaz speak to Dominguez. At that time, according to Matus, he was well aware that no more employees were needed—"Because every person has their post. I have been working there for many years, and I know which post belongs to which people . . . . all the people that's there is busy." Finally, Richard Ochoa, who confined his testimony to October 15, stated that in an ordinary year said date is the peak of the season and that he did not think the Respondent was hiring at the time as all required employees are normally working by then.

With regard to the assertions of the above-stated witnesses, it is instructive to once again refer to Respondent's Exhibit 5, which establishes the following employment figures at the Respondent's packinghouse for September through November 1980:

Week Ending	Employee Complement
09-06-80	12
09-13-80	35
09-20-80	73
09-27-80	63
10-04-80	69
10-11-80	67
10-18-80	71
10-25-80	76
11-01-80	79
11-08-80	76

Furthermore, analysis of General Counsel's Exhibit 3, the Respondent's total employee complement as of October 24, 1980, discloses that five individuals classified as general laborers were hired during the week ending September 20; four such employees were hired in the week ending October 4; and, in each of the following 3 weeks, two general laborers were hired. Finally, Gorgani admit-

[7] Diaz was certain that his last visit to the packinghouse was on a Friday in mid-October inasmuch as on the next day, a Saturday, he sought employment at another packinghouse.

[8] Diaz' recollection of what occurred subsequent to his September 22 visit to the packinghouse was marred by a direct conflict between his testimony as to dates and the reality of the 1980 calendar. Thus, he was certain that his final visit to the packinghouse was on Friday, October 15. As to the day of the week, Diaz was sure it was a Friday inasmuch as on "Saturday I went to ask for the job right there where I'm working." However, a check of the 1980 calendar establishes that October 15 was a Wednesday and that October 17 was a Friday. When confronted with this fact, Diaz continued to insist that the date of his last visit was October 15—"because, you see, the two weeks of October, it would be fifteen days." Further, although Diaz insisted that the packinghouse was in operation, sorting and packing lemons, on the day of his last visit, Respondent's Exhibit 9 establishes that on Wednesday, October 15, no lemons were sorted or packed. However, said exhibit does reveal that lemons were sorted and packed on Friday, October 17.

[9] Matus, who has a severe hearing impairment, normally "hears" by reading the lips of a speaker and admitted that there is a great deal of noise in his work area.

[10] Rezza Gorgani testified that four general factors govern the Respondent's employment requirements on any given day: supply and demand, the grades of fruit, unit costs, and the Federal Government's citrus fruit allotment system. As to supply and demand, employment requirements vary from week to week depending on the market for the citrus growers' products. If their return is low, the growers will not grow fruit. As a consequence, with reduced volume, the need for employees lessens. With regard to the grades of fruit, early in the season grade is not an important consideration, resulting in a reduced employee demand. However, as the season progresses more pickers and graders are needed to cull the poor quality fruit. Regarding the Respondent's unit costs, Gorgani testified that "as the number of employees increases, the unit cost increases. And as the number of employees decreases, the unit cost decreases." He further explained, "if the unit cost is higher, the charges to the growers is going to be higher. . . . Since the . . . commodity . . . is such a margin profitability, we have to watch it constantly, the number of employees we got, to drop our charges; therefore, the return to the grower is going to be more." As to the government allotment system, each packinghouse receives a "marketing order" which "tells us how many units we can pack and ship domestically. If we pack more units than that, we are not allowed to ship it." According to Gorgani, the interaction of the foregoing factors makes hiring and firing utterly unpredictable and often results in hiring or firing done without preparation.

ted that no records exist regarding the availability of work on any one particular day.

Asked whether he would have rehired Diaz had there been work available, Dominguez testified, "I would have hired him if I could have have had a chance to talk with [Richard Ochoa] first, because the previous year . . . Mr. Ochoa told him to do that certain job . . . and he didn't want to do it, and he tried to pick up a fight with him." Also, Diaz quit the preceding season, ". . . and . . . they take into consideration if he quits that season without letting me know . . . that put us in a bind right away, because we don't know if he's coming back or not . . . then that put the rest of the guys . . . to work more harder than they're supposed to."[11] Although Gilberto Matus described Diaz as not a good worker and a complainer, asked by me whether Diaz' work, putting aside the alleged "fight" and the fact that he quit the previous season, was acceptable, Dominguez answered, "I would say work okay. You know, sometime he complained that, you know, tell him to pick up fruit from the floor that falls on, and some day he complain, but, you know, we didn't think too much of it, really."[12]

As to the incident involving Richard Ochoa and Diaz, Ochoa testified that, on a day in May, he almost engaged in a fight with Diaz after the latter refused to pick up oranges from the packinghouse floor. "I asked him to pick up the oranges." Diaz responded, "'Well, the hell if I'm going to pick up oranges.' He said, 'If you don't like it, give me my check right now.'" Thereupon, according to Ochoa, Diaz began slamming a fist into his other hand. "Well, I told him that it was his job to carry the order that we had given him." Diaz repeated that, if Ochoa did not like his conduct, Ochoa should get Diaz' check. Ochoa just walked away, and Diaz never bothered to clean up the oranges. During cross-examination, Ochoa testified that the incident occurred at 8 p.m. and no later; however, after being confronted with his sworn pretrial affidavit, Ochoa admitted stating that the incident had, in fact, occurred 2 hours later—at approximately 10 p.m. Juventino Matus also testified as to this incident, stating that "[Diaz] was given orders that he didn't want to do it, he wanted his check and he was saying words," curse words. Contradicting Ochoa as to the time of day, Matus said, "We were getting ready to get out and the sun wasn't down yet. Or maybe it was going down a little bit." Although the length of the workday that day was unclear in the record, Matus admitted that Diaz often became tired during work and that the hours often lasted from 7 a.m. until 9 p.m. Also, Dominguez admitted that on occasion the workers worked long hours. Finally, Diaz did not deny the incident.

2. Analysis

The amended complaint alleges that Juan Diaz was not rehired by the Respondent in violation of Section 8(a)(1) and (3) of the Act. In support, the General Counsel argues that the Respondent failed to rehire Diaz, from the date of his initial visit to the packinghouse after returning to the Yuma area, "because . . . it knew, or suspected, that Diaz was a union supporter." In contrast, the Respondent's attorney asserts that there is no evidence that any supervisor had knowledge of Diaz' union activities and that he was denied re-employment solely "because there were no job positions open on the day he arrived." Moreover, the General Counsel argues, if Diaz were again denied employment a week or two later, "it would have been based solely on his poor past work record, and the fact that he left his job without notice in May of 1980."

A determination of the legality of Diaz' discharge is governed by the traditional precepts of Board law in 8(a)(1) and (3) discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). Thus, in order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatee engaged in union or other protected concerted activities; (2) that the employer had knowledge of said activities; (3) that the employer's actions were motivated by union animus; and (4) that the discharge had the effect of encouraging or discouraging membership in a labor organization. *WMUR-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the aforementioned by a preponderance of the evidence. *Gonic Mfg. Co.*, 141 NLRB 201, 209 (1963). While the aforementioned analysis was easily applied in cases in which the employer's motivation was straightforward, conceptual problems arose in which the employer's motivation was involved—the presence of both a lawful cause and an unlawful cause for the discharge. In order to resolve this ambiguity, in *Wright Line*, above, the Board established the following causation test in all 8(a)(1) and (3) cases involving employer motivation. "First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." Id. at 1089. Two points are relevant to the foregoing test. First, concluding that the General Counsel has established a prima facie violation of the Act, the Board will not "quantitatively analyze" the effect of the unlawful motive. The existence of such is sufficient to make a discharge a violation of the Act. Id. at 1089 fn. 14. Second, while apparently warranting the identical analytical approach, pretextual discharge cases should be viewed as those in which the "defense of business justification is wholly without merit." Id. at 1084 fn. 5.

What should be clearly perceived by the parties herein is that a determination as to whether Diaz was ulawfully denied reemployment by the Respondent is entirely dependent on the credibility of the witnesses, in particular that of the alleged discriminatee. Thus, if Diaz is credited that Dominguez stated that he (Dominguez) would

[11] Asked during cross-examination whether he told Diaz that if a job existed, he (Domniguez) would have rehired Diaz, Dominguez responded, "After checking with Mr. Ochoa first." Asked if he said this to Diaz, Dominiguez answered in the affirmative.

[12] During cross-examination, Dominguez admitted that many other workers complained about the work.

not rehire Diaz because the latter signed a union card, such conclusively establishes not only that the Respondent had knowledge of, or suspected, Diaz' union activities, but also that Dominguez was motivated by Diaz' union activities in refusing to rehire him and, as a consequence, that the asserted reasons for not rehiring Diaz were a sham and patent fabrications. My task in resolving credibility is complicated by the fact that Juan Diaz was a most unimpressive witness, seemingly incapable of coherently explaining himself and with portions of his testimony (particularly concerning why he was so insistent and certain that his final visit to the Respondent's packinghouse in search of work was on Friday, October 15) hoplessly confusing. However, this is not to say that I found Diaz to be dishonest or lacking in candor. To the contrary, I believe that he related his testimony in a forthright and candid manner and that my difficulties with such mainly resulted from Diaz' lack of literacy. George Dominguez also appeared to be a rather unimpressive witness; however, in contrast to Diaz, his demeanor, I believe, was that of an individual who fabricated significant portions of his testimony. Further, while repeatedly asserting during direct examination that he told Diaz in September he would hire him if work was available, Dominguez did not testify that he qualified such assurances with the statement that he would have to speak to Richard Ochoa before offering Diaz work. Yet, during cross-examination Dominguez stated that not only would he have spoken with Ochoa prior to rehiring Diaz but also he told this to Diaz. Such, of course, is clearly inconsistent. Further, if, as he asserted, Dominguez told Diaz that no work was available, such would not have been true and, as a defense to allegedly unlawfully refusing to rehire Diaz, is inconsistent with the Respondent's own records. In this regard, between September 13 and November 1, the Respondent's employee complement increased from 35 to 79 workers and, during that same period, no less than 15 employees, classified as general laborers, were hired. As he performed all the "male-oriented" jobs, Diaz presumably worked in this job classification. In these circumstances, I credit the testimony of Juan Diaz over that of George Dominguez. Likewise, I place no reliance on, and discount, the testimony of Juventino Matus, who stated that he spoke to Diaz in September about work and told him there was nothing available at Respondent's packinghouse; Richard Ochoa, who testified that no hiring was being done around October 15; and Gilberto Matus, who denied Diaz' testimony as to his final meeting with Dominguez. I believe each demonstrated, by his demeanor, a definite bias in favor of the Respondent and tailored his testimony to comport with the Respondent's asserted defenses.

Based on my above-stated resolutions of the witnesses' credibility, I conclude that the Respondent, through Dominguez, was aware of—or, at least, suspected—Diaz' involvement in the union organizing campaign and that Dominguez was unlawfully motivated in refusing to rehire him. In this regard, I find that Diaz went to the Respondent's packinghouse about September 22 seeking work; that Dominguez told him, at that time, nothing was available but that he should return; and that, over the following 3-week period, Diaz visited the packinghouse three times a week but was informed by Dominguez that no jobs were available. I further find that Diaz last visited the Respondent's facility on Friday, October 17, and that he was present when, speaking to Gilberto Matus, Dominguez said he would not rehire Diaz as the latter had signed a card for the Union. As to the above date, I believe that Diaz was honestly confused as to the *date* but not as to the *day* of this visit and, given its occurrence on a Friday during the second full week of October and the Respondent's own records which reveal that lemons were packed on this day, that October 17 must be the correct date of Diaz' final meeting with Dominguez. Finally, I note that, by Diaz' own account, his union activities were scant and discreet and that other than his own version of his final meeting with Dominguez there is no record evidence of the Respondent's knowledge of said activities. However, Diaz' testimony which I have credited is sufficient to establish this essential factor and, while troubling, I shall not, and need not, engage in speculation as to how Dominguez learned of Diaz' limited involvement with the Laborers.

Based on the aforementioned credibility resolutions, the state of the record is that Dominguez *admitted* to Diaz that he was unlawfully motivated in refusing to offer re-employment to the former. The effect of said admission is to render as fabrication the Respondent's proffered defense for its conduct. In these circumstances, careful examination of the validity of the various facets of the Respondent's defense is seemingly not required. However, inasmuch as credibility is of such overriding significance herein, I note that the Respondent absolutely failed to establish that no work was available for Diaz in late September and early October. To the contrary, the Respondent's records reveal that several general laborers were hired during this time period, individuals who presumably performed work which Diaz was quite capable of performing. While Gorgani asserted that the Respondent's employment needs changed daily and decisions in this regard were made with little preparation, I do not accept the contention that no work was available on *any* of the days on which Diaz sought work. The employment records seemingly refute this and even Gorgani admitted that no records exist which support his assertion. As to the matters of Diaz having abruptly quit in May, and of his uncontroverted insubordination to Richard Ochoa, I note that Dominguez himself testified that *his* alleged reason for not rehiring Diaz was a lack of work and that he engaged in a blatant contradiction, stating that he would have checked with Ochoa before rehiring Diaz. In these circumstances, the latter two justifications appear to have been afterthoughts.

Accordingly, based on the record as a whole, I find that the Respondent failed and refused to rehire Juan Diaz in violation of Section 8(a)(1) and (3) of the Act. *H. B. Zachry Co.*, 261 NLRB 681 (1982). *Central Transport*, 244 NLRB 656, 658–659 (1979), *Victor Valley Hospital*, 227 NLRB 513 (1976).[13]

[13] Counsel for the Respondent argued that there is no record evidence that the Respondent's refusal to rehire Diaz had the effect of encouraging anyone to join or discouraging anyone from joining a labor organization

Continued

B. *The Alleged Independent 8(a)(1) Violations*

1. The facts

Counsuelo Vasquez testified that she was hired by Eva Gross on October 21, 1980, as a "grader" and that her job was to sort lemons which passed by her on a conveyor belt. Vasquez, who stated that she was acquainted with Gross from having worked with her at another packinghouse 3 years before, further testified that, on the afternoon of October 21 at approximately 3 p.m., Gross approached her work station and spoke while Vasquez continued to work. ". . . [S]he asked me, do you know that the Union's going around here, and I said no, and she said yes. And then she said well, there's a Union going around here. . . . and then she said if the Union gets here, are you going to vote for it, and I said . . . I don't know . . . she told me to vote no for the Union. She told me to vote no for the Union if I was going to vote." Vasquez asked Gross which girls were supporting the Unions; the latter pointed to four of them, naming Maria Espinoza and Sara Espinoza but not the others. Vasquez volunteered that her late husband had been a member of the Laborers and asked why should she vote no. "And she told me because they didn't want a Union around them." Vasquez asked why, and Gross replied, ". . . because the Union around was lying, and I said lying about what?" Thereupon, Gross mentioned a worker named Abelina Mendoza, identified her as one of the girls who had been distributing cards on behalf of the Laborers, and said that the Union had promised to help her with her sick young child—putting him in a hospital. Vasquez said that the Union would undoubtedly do that; Gross said that Vasquez should not say such a thing, that the Union was lying, that Vasquez should tell Mendoza to vote no, and that "if I said that the Union was good . . . I was going to be taken to the office."

Next, Gross said "that she hired me because she knew me and she wanted me to help her." Vasquez asked, ". . . help you with what? And then she told me that she wanted me to tell the women to vote no for the Union." Gross continued, explaining that "she wanted my help because I had experience with the Union because I told [her] about my husband." Vasquez responded that she could not do what Gross requested. Finally, Vasquez recalled, at one point in their conversation, Gross said, ". . . you know . . . . if you vote for the Union, they're going to fire you?" Vasquez asked who Gross meant by "they," and Gross responded, ". . . the Union." Nothing more was said during this conversation.

Later that same day, according to Vasquez, while she and her daughter were eating dinner at her home, Eva Gross came to her house and asked to speak to Vasquez. They walked outside, and Gross said to the employee that "she wanted me to give my experience to the girls there . . . . And then I asked her what about. And she said she wanted me to tell Hermilina Burke and Anna Maria Espinoza . . . and Berta . . . to vote no for the Union. And I asked her why, and she said because she didn't want those girls to vote for the Union." Next, Gross again raised the subject of Abelina Mendoza and her sick child, saying "that the Union wasn't going to help her with her little boy. And then she told me to tell some of the people, too." Vasquez responded that she could not do that, and Gross asked Vasquez how she knew the Union was good. The latter explained that her husband had been a member of the Laborers and that the labor organization had helped pay his funeral expenses. Gross replied, repeating her earlier-stated warning "[I]f you tell [that to the girls] then you're going to be taken to the office." The floorlady then left.

Abelina Mendoza, who was hired by Eva Gross in September and worked as a lemon sorter, testified that approximately 1 week before the NLRB-conducted election, which was held on October 31, Gross approached her at Mendoza's work station one morning and asked that the employee accompany her into the restroom. Mendoza was quite nervous, and Gross offered her a cigarette to calm her nerves. Thereafter, they spoke about the imminent election and Mendoza's sick child. With regard to the former, Gross said that if Mendoza was for the Company and not the Union "my job would be secure." Also "she told me that if the Union won, I could not be late any more, or be off from work because I would be fired."[14] Next, Gross raised the subject of Mendoza's status in the United States, asking if she possessed immigration papers. "I told her I had a working permit." Gross replied that she really did not care if Mendoza had such papers or did not but that "if I didn't have any papers, the Union would not let me vote."

Eva Gross testified that, as the Respondent's floorlady, she is responsible for placing the graders at different positions along the conveyor belt and making sure that not too many citrus fruits are eliminated during the sorting procedures. With regard to Consuelo Vasquez, Gross denied ever having gone there in order to speak about "the Union."[15] She also generally denied ever interrogating the graders as to whether they supported "the Union" or ever asking any grader to campaign against "the Union." As to Abelina Mendoza, Gross denied having asked the former if she had immigration papers, telling Mendoza that if she did not have such papers, she could not vote, or telling her that "the Union" would not let her vote if Mendoza did not have immigration papers. While denying interrogating employees on the subject, Gross testified that employees did question her about the Union, stating that Mendoza told her that she did not know whether to vote yes and that she told Mendoza "she had to make her own decision how to vote." Finally, Gross averred that she was absolutely

and that, therefore, no violation of Sec. 8(a)(1) and (3) has been established. Clearly, however, the natural result of this conduct would be to have such an effect upon Diaz. In any event, the Supreme Court answered counsel's assertion 30 years ago. In *Radio Officers v. NLRB*, 347 U.S. 17 (1954), the Court said ". . . an employer's protestation that he did not intend to encourage or discourage must be unavailing where a natural consequence of his action was such encouragement or discouragement. . . . [I]t is presumed that he intended such consequence. In such circumstances, intent to encourage is sufficiently established." Id. at 45.

[14] Mendoza testified that she was often late or absent as a result of her child's illness.

[15] She testified that she did go to Vasquez' house on two occasions—once to lend Vasquez $25 for "gas money" and on another occasion to give the employee her paycheck.

"impartial" during the election campaign—"No, I didn't think whether I would want it or not."[16]

Employee Trinidad Gonzalez testified that she worked for the Respondent from February 1980 until June 1980—"until the run was over." According to the witness, one day in May she had a conversation with Richard Ochoa in the area of the "dump," where freshly picked fruit is deposited prior to processing. She was working when Ochoa approached; "he asked me if I was one of the leaders of the Union. . . . I told him that it wasn't me, that there were several." Richard Ochoa denied the entire incident.[17]

Finally, the following is alleged to constitute unlawful conduct by the Respondent. Employee Marta Gutierrez, who had worked for the Respondent for 3 years, testified that 3 days before the election Eva Gross approached as Gutierrez was leaving the ladies' restroom and said she wanted to talk to the employee. According to Gutierrez, "she told me that I was free to vote or not vote, but it was a duty to vote, and that without . . . the Union they had already given us two more cents per box." Asked when this increase had been given to the employees, Gutierrez said such was given the previous year. Gross denied the incident, and Michael Shrader, the Respondent's accountant, testified that no such raise had ever been given to the Respondent's sorters.

2. Analysis

The amended consolidated complaint alleges, and counsel for the General Counsel contends, that the aforementioned statements and remarks of Eva Gross and of Richard Ochoa constitute violations of Section 8(a)(1) of the Act. Both the General Counsel and the Respondent's attorney recognize that resolution of the allegations depends on my evaluation of the credibility of those witnesses who testified on behalf of the General Counsel, Vasquez, Mendoza, Gonzalez, and Guiterrez, against that of the Respondent's witnesses Gross and Ochoa.[18] Based on observations of the demeanor of each, I found Vasquez, Mendoza, and Gonzalez to be honest and forthright witnesses and I credit the testimony of each herein. In contrast, Gross impressed me as a witness who fabricated her testimony and who did not know the meaning of candor. More specifically, I was not impressed by her asserted neutrality during the election campaign or by her rather generalized denials of the allegations herein. Further, I have previously stated my belief that Richard Ochoa demonstrated a bias toward the Respondent, which attitude tainted his testimony. I place no reliance on the testimony of either Gross or Ochoa.

The foregoing credibility resolutions lead to the inescapable conclusion that the Respondent engaged in a preelection campaign of unfair labor practices, designed to dissuade susceptible employees from voting for the petitioning labor organizations, the Laborers and the Teamsters. In this regard, Richard Ochoa interrogated Gonzalez as to her role in the organizing campaign. Such conduct "without a legitimate purpose and adequate assurances against reprisal . . . is inherently coercive, and hence violates Section 8(a)(1)." *Vincent et Vincent of Allentown Mall*, 259 NLRB 1025, 1026 (1982); *E. I. du Pont & Co.*, 257 NLRB 139, 140 (1981); *Major Cab Co.*, 255 NLRB 1383, 1388 (1981). Further, during her two conversations with Consuelo Vasquez, Eva Gross committed several violations of the Act. Thus, after informing her of the union organizing campaign, Gross asked Vasquez if she intended to vote for the petitioning Unions. Such interrogation is, of course, violative of Section 8(a)(1) of the Act. *Gladieux Food Service*, 252 NLRB 744, 746 (1980); *Paceco*, 237 NLRB 399, 400 (1978); *Greenpark Care Center*, 236 NLRB 683, 697 (1978). At least two times during their conversations, Gross pointed out individuals who, she stated, were union supporters. Such statements have been held by the Board as tending to create, in the minds of fellow employees, the impression that the employer is engaging in surveillance of their union activities and they are violative of Section 8(a)(1) of the Act. *H. B. Zachry Co.*, supra; *Hoover, Inc.*, 240 NLRB 593, 606 (1979); *C & J Mfg. Co.*, 238 NLRB 1388, 1391 (1978). Gross requested Vasquez to aid her during the preelection campaign by relating her experiences with the Union to fellow employees and telling them to vote against it. Such importunate solicitations to employees to dissuade others from supporting a labor organization are violative of Section 8(a)(1) of the Act. *Vincent et Vincent*, supra; *Weyerhauser Co.*, 251 NLRB 574, 578 (1980); *Amber Delivery Service*, 250 NLRB 63, 71 (1980). On two occasions during their conversations, Gross warned Vasquez that she would be taken to the "office" if she, instead, spoke favorably about the Unions to employees and once Gross threatened that Vasquez would be fired, by the Union, if she voted for it during the election. Clearly, such statements constitute blatant threats of retaliation for engaging in protected concerted activity and are violative of Section 8(a)(1) of the Act. *Wilkes-Barre Wholesale Service*, 246 NLRB 491 (1979); *Cone Mills*, 245 NLRB 159 (1979).

With regard to her conversation with employee Mendoza, the record establishes that Gross also committed

[16] Josephine Ochoa, the wife of Supervisor Richard Ochoa, testified that she worked as a "sample girl" for the Respondent during the 1980 election campaign and that she never had a conversation about the Union with Eva Gross at that time. Hilaria Garcia Lomeli, a sorter for the Respondent for 5 years, likewise denied speaking to Gross about the Union during the election campaign. Further, the parties stipulated that four other graders would testify in a similar manner.

[17] Ochoa testified that he had been instructed not to ask such questions, and Gorgani testified that the Respondent utilized labor relations experts in order to conduct the preelection campaign and that said individuals counseled supervisors as to what should and should not be said to employees during the preelection period.

[18] Inasmuch as I do not deem their testimony relevant to whether Gross or Ochoa violated Sec. 8(a)(1) of the Act by their alleged statements to employees Vasquez, Mendoza, Gonzalez, and Gutierrez, I shall not pass on the credibility of the Respondent's witnesses Josephine Ochoa or Hilaria Garcia Lomeli. Thus, assuming arguendo their credibility, the fact that Gross may not have spoken to either about the Laborers or the Teamsters during the campaign may be reflective of such factors as their relationship to supervisors (in the case of Ochoa) or their longevity as employees (in the case of Lomeli). As to the stipulated testimony, I do not perceive it relevant to the allegations if the testimony of the General Counsel's witnesses are credited. Again, the fact that Gross may have spoken to some, but not all, of the employees may be reflective of factors not discernible from this record—such as the witnesses' perceived vulnerability to such conduct.

violations of the Act. Thus, by linking Mendoza's job security to her support for the Respondent during the campaign, Gross, in effect, threatened to fire the employee if Mendoza supported, and eventually voted for, the petitioning Unions—in violation of Section 8(a)(1) of the Act. *Cone Mills*, supra. That Gross meant the above comment as a threat is made blatantly clear by her comment, which immediately followed—that, if the Unions were victorious in the election, Mendoza no longer could report late for work or take time off from work because of her sick child. "[T]he Board has found that an employer may not threaten an employee with the . . . stricter enforcement of work rules as a consequence of supporting a union." Such is violative of Section 8(a)(1) of the Act. *Colson Equipment*, 257 NLRB 78, 81 (1981); *Mark Lines Inc.*, 255 NLRB 1435, 1439 (1981). Finally, by raising the spectre of Mendoza's immigration papers and commenting that the Unions might not permit her to vote if she did not have them, Gross engaged in a rather "thinly veiled" threat to notify the Immigration and Naturalization Service in order to dissuade Mendoza from supporting the Laborers—in violation of Section 8(a)(1) of the Act. *Sure-Tan, Inc.*, 234 NLRB 1187, 1191 (1978).

As to the alleged conversation between Gross and Gutierrez in which Gross mentioned the upcoming election and said Gutierrez should remember that the Respondent had given the female employees a raise of 2 cents per box without a union's intervention, assuming arguendo the credibility of employee Gutierrez, I do not believe Gross' comment rises to the level of a violation of Section 8(a)(1) of the Act. Thus, rather than constituting an "implicit promise" of a future raise, the statement of Gross is no more than a statement of fact and a reminder that employees were previously given a raise and that a union's assistance had not been necessary. To find that Gross implied a future raise if there were no union representing the workers would be to speculate as to such, and I shall not do so. Accordingly, I do not believe that the alleged comment would be violative of the Act, and I shall recommend that the applicable paragraph of the amended complaint be dismissed.

V. REMEDY

Having found and concluded that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend to the Board that it be ordered to cease and desist from engaging in such acts and conduct. I shall also recommend to the Board that the Respondent take certain affirmative action in order to effectuate the policies of the Act. With regard to Juan Diaz, I believe that the Respondent unlawfully refused to rehire him on or about October 1, 1981.[19] Accordingly, I shall recommend that the Respondent be ordered to offer him immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. I shall further recommend that the Respondent be ordered to make him whole for any loss of earnings he may have suffered as a result of the discrimination against him by payment to him of the amount he normally would have earned from the date of the refusal to rehire him, October 1, 1981, with backpay to be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest as prescribed in *Isis Plumbing Co.*, 138 NLRB 716 (1962); and *Florida Steel Corp.*, 231 NLRB 651 (1977).

VI. THE LABORERS' OBJECTIONS

Timely objections to the conduct of the October 31, 1980 election were filed by the Laborers and served on the Respondent. Four of said objections address the allegations of the amended complaint and concern conduct occurring between the filing of the petition and the date of the election and are violative of Section 8(a)(1) of the Act. Thus, for the reasons set forth in my analysis of the unfair labor practice allegations, I find Laborers' Objections 1, 2, 5, and 7 to be meritorious and recommend that they be sustained. *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962). As no evidence was adduced in support of the remainder, I shall further recommend that said objections be overruled.

In view of my recommendations with respect to Objections 1, 2, 5, and 7 above, it is also recommended that the results of the election held on October 31, 1980, be set aside and that Case 28-RC-3849 be remanded to the Regional Director for Region 28 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of bargaining representation. Further, having found that the conduct of the Employer precluded a fair election, I shall recommend that the Regional Director include in the notice of election to be issued in this matter the following paragraph pursuant to the Board's decision in *Lufkin Rule Co.*, 147 NLRB 341 (1964):[20]

Notice To All Voters

> The election conducted on October 31, 1980, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of their right, free from interference by any of the parties.

Upon the foregoing findings of fact, and the entire record herein, I make the following

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[19] Notwithstanding that the evidence of the Respondent's knowledge of Diaz' union activities is on October 17, given that Dominguez was continually telling Diaz that no work was available when such is refuted by the Respondent's own records, I shall date the discrimination from this date.

[20] Said notices should be in English and Spanish.

2. The Laborers is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(3) and (1) of the Act by refusing to rehire employee Juan Diaz.

4. The Respondent violated Section 8(a)(1) of the Act by:

(a) Interrogating employees concerning their union membership, sympathies, and activities.

(b) Creating the impression in the minds of employees that it was engaging in surveillance of their union activities.

(c) Soliciting employees to campaign against the Laborers and to dissuade their fellow employees to withdraw support from the Laborers.

(d) Threatening employees with termination and other reprisals because of their support for the Laborers.

(e) Threatening employees with harsher and more onerous working conditions because of their union activities.

(f) Impliedly threatening to notify the Immigration and Naturalization Service in order to dissuade employees from supporting the Laborers.

4. Except as found, the Respondent has not committed any other unfair labor practices.

5. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended

ORDER[21]

The Respondent, Sun Country Citrus, Inc., Yuma, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to rehire laid-off or former employees because they engaged in union activities.

(b) Interrogating employees concerning their union membership, sympathies, and activities.

(c) Creating, among its employees, the impression that it is engaging in surveillance of their union activities.

(d) Soliciting employees to campaign against a union and to dissuade their fellow employees from engaging in union or other protected concerted activities.

(e) Threatening employees with termination and other reprisals because they engaged in union or other protected concerted activities.

(f) Threatening employees with harsher and more onerous working conditions because they engaged in union or other protected concerted activities.

(g) Impliedly threatening to notify the Immigration and Naturalization Service in order to dissuade employees from supporting a labor organization.

(h) In any like or related manner threatening, coercing, or restraining employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Offer Juan Diaz immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered as a result of the discrimination against him in the manner set forth in the section of this decision entitled "Remedy."

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll and all other records necessary to determine the backpay due under the terms of this Order.

(c) Expunge from its files all reference to the refusal to rehire Juan Diaz and notify him that such has been done.

(d) Post at its Yuma, Arizona facility copies of the attached notice marked "Appendix."[22] Copies of the notice,[23] on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the amended complaint be dismissed insofar as it alleges that the Respondent violated Section 8(a)(1) of the Act by implying that employees would receive a future wage increase if they voted against the Laborers.

IT IS FURTHER RECOMMENDED that the election in Case 28-RC-3849 be set aside and that said case be remanded to the Regional Director for Region 28 for proceedings not inconsistent with this decision.

---

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[22] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[23] Said notice should be in English and Spanish.